

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF INDUSTRIE- EN  
HANDELSONDERNEMING  
ROFFELSEN B.V.  
FILED WITH THE CHAMBER OF COMMERCE UNDER NUMBER 17060724**

**Article 1. DEFINITIONS**

1.1. These terms and conditions are applicable to any and all proposals and deliveries of products and services of the private company with limited liability Industrie- en handelsonderneming Roffelsen B.V., hereinafter referred to as: 'Roffelsen', as also to any and all (supplementary) agreements, also including agreements that are related to and/or derive from distribution agreements between Roffelsen and a buyer, hereinafter referred to as: the 'other party'.

1.2. Additions to or deviations from these terms and conditions must be stipulated in writing and are only valid for the agreement for which they were stipulated.

1.3. Different general terms and conditions, including the (purchasing) terms and conditions of the other party, are not accepted by Roffelsen, unless stipulated otherwise in writing and confirmed by Roffelsen.

1.4. For the purpose of these terms and conditions 'in writing' is understood as by post or electronically.

**Article 2. GENERAL**

2.1. Any and all proposals are entirely subject to contract and have a validity of 30 days, unless stipulated otherwise in writing. A proposal that includes a time limit can nonetheless be revoked by Roffelsen, even after receipt of the contract, provided within 5 working days after receipt of the said contract. 2.2. Prices, quantities, colours, dimensions and the like mentioned in price lists, offers and other documents are for information purposes only. They have the nature of an approximate indication and do not have binding effect on Roffelsen. If a sample, model or image was shown or made available to the other party then it is assumed to merely have been shown by way of indication without the good having to correspond with it, unless it is expressly stipulated that the good shall correspond with it.

2.3. Proposals or offers are not automatically valid for future contracts.

2.4. The offer includes a description of the goods to be delivered and the activities to be performed that is sufficiently detailed for the facilitation of a proper assessment of the offer by the other party. The offer to the other party provides insight into the price. 2.5. Roffelsen reserves any and all intellectual property rights in respect of images, drawings and models used in the proposals.

**Article 3. AGREEMENTS**

3.1. An agreement is deemed to have only been concluded in a legally valid manner after Roffelsen has confirmed the contract in writing. The content of the agreement is determined by the order confirmation of Roffelsen and these general terms and conditions. Additional arrangements and/or changes, made by whomever, only have binding effect if they were confirmed by Roffelsen in writing.

3.2. If - after the contract has been awarded - the other party has additional requirements during the performance that were not included in the contract then the said additional activities are charged on the basis of the fixed hourly rate - in addition to the stipulated principal sum - unless stipulated otherwise. A contract for additional work must be confirmed by the other party in writing. Changes in the original contract - of any nature whatsoever - must be confirmed by Roffelsen in writing. 3.3. Potential additional activities that fall outside the contract shall be invoiced by Roffelsen as contract extras at the then applicable hourly rate.

3.4. Each and every offer or commitment made by a representative of Roffelsen shall only have binding effect to the extent that the latter confirmed this in writing.

3.5. If Roffelsen intends to conclude a credit agreement then agreements are always concluded on the suspensive condition of obtaining credit insurance cover in respect of the other party.

**Article 4. IMPLEMENTATION OF THE AGREEMENT**

4.1. Roffelsen shall implement the agreement to the best of its knowledge and ability and in accordance with high standards and on the basis of the then known state of the art. Where required and provided on express request, Roffelsen shall keep the other party informed of the progress.

4.2. If and to the extent that this is required for proper implementation of the agreement, Roffelsen is entitled to have (certain parts of) the agreement implemented by third parties.

4.3. The other party ensures that any and all data of which Roffelsen indicates that they are required or of which the other party should reasonably understand that they are required for the implementation of the agreement, are made available to Roffelsen in a timely fashion. **Article 5. DELIVERY (COMPLETION)**

5.1. Unless stipulated otherwise in writing, deliveries are based on Free Carrier, Surany, Slovakia (FCA, Incoterms version applicable at the time of conclusion of the agreement).

5.2. The delivery (completion) period is stipulated per transaction. Specified delivery (completion) periods are merely an indication and can never be qualified as a fatal deadline. Roffelsen shall not be in default with regard to the delivery (completion) period other than after it has been given written notice of default by the other party, the latter then gives it the opportunity to yet deliver (complete) within a reasonable period and Roffelsen fails to comply with this.

5.3. The delivery (completion) period does not take effect other than after an agreement has been concluded in conformity with the provisions set forth in article 3 and the other party provided Roffelsen with the data and information required for implementation of the agreement and Roffelsen has received the

potentially stipulated advance payment from the other party.

5.4. As soon as Roffelsen observes that the specified period shall be overstepped, Roffelsen shall contact the other party about this. The obligations of the other party remain unchanged. Only in case of an excessive overstepping (more than six (6) weeks) of the stipulated delivery (completion) period shall the other party be entitled to rescind the agreement, unless the overstepping is caused by force majeure. The other party is, however, never entitled to any penalty or compensation.

5.5. Roffelsen is entitled, however not held, to deliver the goods in instalments, in which instance the (payment) terms outlined below are equally applicable to each and every partial delivery.

5.6. The other party is subject to a purchase obligation. If the other party does not take delivery of the goods on the stipulated date then the other party shall be in default and Roffelsen can, at its sole discretion, (i) rescind the agreement without judicial intervention; (ii) send the goods to the other party at the risk and expense of the same; (iii) retain the goods in its possession at the risk and expense of the other party. Any and all costs deriving from the aforementioned circumstances, inter alia including potential deficit proceeds, shall be at the expense of the other party. The above applies without prejudice to the other rights vested in Roffelsen.

#### **Article 6. PRICES**

6.1. Any and all quotations and the prices charged by Roffelsen are the prices excluding VAT applicable at the moment of the offer and/or the conclusion of the agreement, unless stipulated otherwise in writing. The prices are based on Ex Works, Surany, Slovakia (EXW, Incoterms version applicable at the time of conclusion of the agreement), unless stipulated otherwise in writing.

6.2. A change in one or more of the cost price determining factors, e.g. purchase prices (whether or not changed with retroactive effect), exchange rates, import tariffs, turnover tax, increases of the prices of commodities and materials, production costs or currency exchange fluctuations, that occurs after the order confirmation but before delivery shall entitle Roffelsen, at its sole discretion, to charge a correspondingly higher price or to cancel the order, without the other party being entitle to any compensation in connection therewith.

#### **Article 7. PAYMENT**

7.1. Payment must take place within 14 days after the date of the invoice. If different payment terms were agreed on then this shall follow from the invoice. Payment must take place without deduction of any discount, bank charges or set-off through a transfer or remittance to a bank account specified by Roffelsen. Roffelsen is always authorised to require full or partial advance payment from the other party.

7.2. Invoicing can take place on the basis of advance invoices, potentially with interim invoice(s) and a final invoice, this depends on the level of the order and exclusively in consultation.

7.3. The other party shall be in default after expiry of the payment term as intended in paragraph 1 of this article, without a notice of default being required, regardless of the fact whether or not the relevant overstepping can be attributed to the other party.

7.4. Without prejudice to the other rights vested in the same, Roffelsen shall, as the occasion arises, be authorised to charge interest on the outstanding amount at 1.5% per month or a part of a month, effective from the relevant due date.

7.5 Any and all costs, both judicial and extra-judicial, with regard to the collection of the amount due by the other party and not paid in a timely fashion shall be at the expense of the other party. The extra-judicial costs are set at a minimum of 15% of the relevant invoice amount and shall amount to at least EUR 250.00 per claim.

7.6. Incoming payments are applied to the oldest outstanding items, interest and costs, even if the other party specifies differently in connection therewith. 7.7. Roffelsen is always authorised to upon or after the conclusion of the agreement, before performing (further), require of the other party that the latter forthwith provides (additional) payment security in a form to be determined by Roffelsen.

7.8 Potential objections to an invoice must be submitted to Roffelsen in writing and in a substantiated manner within eight (8) working days after the date of the invoice. After expiry of the said time limit, complaints are no longer handled and the other party forfeited its relevant rights. Objections to the level of the presented invoices do not suspend the payment obligation of the other party. 7.9 Roffelsen is entitled to suspend compliance with its obligations until the other party has complied with all its eligible payment obligations.

#### **Article 8. CANCELLATION**

8.1. In case of cancellation by the other party of an order any and all costs incurred by Roffelsen in connection with the contract as well as the lost profit immediately fall due, with a minimum of 10% of the principal sum, all where required plus damages potentially incurred by Roffelsen as a result of the cancellation.

8.2. It is not possible to cancel a special order.

#### **Article 9. WARRANTY AND COMPLAINTS**

9.1. Roffelsen warrants that any and all products delivered by Roffelsen and manufactured by third parties are subject to manufacturer's warranty as provided by the relevant manufacturer and/or supplier. Roffelsen warrants that any and all goods are suitable and statutorily permissible for the purpose for which they are meant, that they are in conformity with the stipulated specifications and that the said goods are free from material and manufacturing errors during a period of 12 months after delivery to the other party.

9.2. In consideration of the provisions set forth elsewhere in these terms and conditions, Roffelsen warrants the soundness as well as the quality of the material delivered by the same. The said material is recycled PVC and does not require a warning for safe use. 9.3. The warranty obligation expires in case of injudicious use, incorrect handling and

if the technical instructions regarding the use are not observed.

9.4. The other party is held to immediately after having taken delivery check the delivered goods, including the packaging, on potential shortcomings and/or damages. Potential shortcomings, visible defects and/or damages in connection therewith must be recorded on the carriage document or the delivery note by the other party. Complaints must be submitted to Roffelsen as soon as possible and in writing, however in any case within two (2) working days after receipt of the goods. After the expiry of the said time limit complaints are no longer handled. Putting the goods into use qualifies as acceptance. 9.5. Roffelsen shall inform the other party within 18 working days after receipt of the complaint in writing of the well-founded, or unfounded, finding. The complaint must contain a description of the shortcoming that is as detailed as possible in order that Roffelsen is able to react adequately. 9.6. The provisions set forth in the previous paragraphs do not affect the statutory rights of the other party in case of hidden defects of the delivered goods. The other party is held to report hidden defects to Roffelsen in writing within two (2) working days after they have been established or could reasonably have been established, however in any case within three (3) months after delivery.

9.7. If a complaint is, at the discretion of Roffelsen, well-founded and was submitted within the relevantly applicable time limit for complaints, then Roffelsen shall, at its sole discretion, only be held to yet deliver the missing goods, to repair or replace the delivered goods or to take back the goods and to credit the other party for the relevant invoice amount. In no instance whatsoever shall Roffelsen be held to pay compensation for other costs and/or damages.

9.8 It is only allowed to return the goods with prior written consent of Roffelsen, on the basis of terms and conditions to be determined further by Roffelsen. 9.9. A complaint is not possible if:

- the damages are the result of negligence of the other party or because the other party acted in violation of instructions, directions and recommendations of Roffelsen;

- the other party did not comply with its obligations vis-à-vis Roffelsen (both financially and otherwise).

9.10. Minor deviations common in the industry and differences in quality, dimensions or finishing cannot give cause to complaints. Roffelsen can deliver up to 10% more or less of the contracted quantity.

9.11 A complaint shall not entitle the other party not to comply with its (payment) obligations vis-à-vis Roffelsen or to rely on suspension respectively settlement.

#### **Article 10. SUSPENSION AND RESCISSION 10.1.**

Roffelsen is authorised to suspend the compliance with the obligations, without judicial intervention and notice of default being required, by a reasonable period or to rescind the agreement without being liable to pay compensation if:

- the other party does not comply with the obligations pursuant to an agreement concluded with Roffelsen (in a timely fashion), not properly or not entirely;

- after the conclusion of the agreement circumstances that came to the knowledge of Roffelsen give good reason to fear that the other party does not comply with the obligations (in a timely fashion), not properly or not entirely as also in case of bankruptcy or suspension of payment of the other party or in case of discontinuation or liquidation of its business. In case there is good reason to fear that the other party shall only comply partly or not properly, the suspension is only permitted to the extent that it is justified by the shortcoming;
- upon or after the conclusion of the agreement the other party was requested to provide security for compliance with its obligations pursuant to the agreement and the said security failed to materialise or is insufficient.

10.2. Roffelsen is moreover authorised to rescind (have rescinded) the agreement if circumstances occur that are of such nature that compliance with the agreement is impossible or - according to the principles of reasonableness and fairness - can no longer be required or if circumstances otherwise occur that are of such nature that unchanged preservation of the agreement can reasonably not be expected.

10.3. If the agreement is rescinded then the claims of Roffelsen vis-à-vis the other party immediately fall due. If Roffelsen suspends compliance with the obligations then it retains its claims by law and pursuant to the agreement.

10.4. Roffelsen always reserves the right to claim compensation.

#### **Article 11. RESERVATION OF TITLE**

(a deviating scheme applies to German customers, see article 21)

11.1. Any and all goods and materials delivered by Roffelsen, also including potential designs, sketches, drawings, etc., remain the property of Roffelsen up to the moment of payment in full of any and all amounts, including potential interest and costs, that the other party is liable to pay for the goods delivered or to be delivered pursuant to an agreement and/or pursuant to a failure to comply with this kind of agreement.

11.2. The other party is not authorised to pledge or otherwise encumber the goods that fall under the reservation of title. The other party is, however, allowed to use and/or alienate the goods in the course of its normal business operations with the understanding that, until the other party has paid the goods in full and has complied with its other obligations on account of similar agreements with Roffelsen,

Roffelsen shall subrogate to the rights of the other party vis-à-vis its buyers. As the occasion arises the other party then transfers,

where required, the said rights to Roffelsen, which transfer Roffelsen accepts. However, the other party is not allowed to alienate the goods in the course of its normal business operations at the moment that the other party has applied for suspension of payment or the other party was declared bankrupt.

11.3. If third parties impose an attachment on the

goods delivered subject to reservation of title or intend to establish or enforce rights in respect of the same then the other party is held to inform Roffelsen accordingly as soon as can reasonably be expected. 11.4. The other party is held to insure the goods delivered subject to reservation of title, and to keep them insured, against fire, explosion and water damage as also against theft and to on demand provide insight into the policy of the said insurance. 11.5. In case Roffelsen intends to exercise its ownership rights as intended in this article, the other party hereby already gives Roffelsen or third parties to be designated by the same unconditional and irrevocable consent to access all the locations where the properties of Roffelsen are located and also to take back the said goods.

11.6 If the same type of goods was delivered on one or more unpaid invoices then the goods present at the other party are deemed to have been delivered on the unpaid invoices.

#### **Article 12. LIABILITY**

12.1 Roffelsen shall not be liable for damages of any nature whatsoever on account of the fact that Roffelsen departed from incorrect and/or incomplete data supplied by the other party.

12.2 Roffelsen shall not be liable for any damages incurred by the other party, unless there is question of intent or gross negligence on the part of Roffelsen or managerial subordinates and barring the statutory liability in pursuance of mandatory provisions.

12.3. Should Roffelsen be liable then the said liability shall be limited to what is regulated in this provision.

12.4. If and to the extent that, despite the provisions set forth above, Roffelsen is subject to any liability, on any account whatsoever, then the said liability shall be limited to the net invoice value of the relevant goods / contract, with the understanding that Roffelsen shall at most and exclusively be liable up to an amount of at most EUR 25,000.00 per claim. A series of related harmful events is for the purpose of this article qualified as one event / claim.

12.5. Roffelsen shall never be liable for indirect damages, including consequential damages, lost profit, lost savings and losses due to business interruptions.

12.6. Some products are made of recycled PVC material that may contain DEHP or DOP (EC no.: 204-211-0, cas. no.; 117-81-7). If products are manufactured from waste then the REACH legislation is not applicable. Roffelsen shall never be liable if in violation of the EU regulations the other party nonetheless processes and/or uses the delivered products for or in, for instance, toys and/or products for children.

12.7. The other party indemnifies Roffelsen against any and all claims of third parties on account of product liability as a result of a defect in a product that was delivered to a third party by the other party and that (also) consisted of goods and/or materials delivered by Roffelsen. The other party is

held to compensate Roffelsen for any and all damages incurred in connection therewith, including the (complete) costs of putting forward a defence.

12.8. Each and every claim for compensation expires if it is not submitted to Roffelsen in writing within 1 year after delivery.

#### **Article 13. INDEMNIFICATIONS**

13.1. The other party indemnifies Roffelsen against claims of third parties, e.g. with regard to intellectual property rights in respect of materials or data supplied by the other party that are used during the implementation of the agreement. 13.2. The other party is held to indemnify Roffelsen against each and every liability vis-à-vis third parties to the extent that it derives from or is related to (the use of) the delivered goods, unless the liability is a direct result of intent or gross negligence of Roffelsen.

#### **Article 14. FORCE MAJEURE**

14.1. The parties are not held to comply with an obligation if they are prevented from doing so as a result of a circumstance that cannot be attributed to culpability and should neither be at their expense pursuant to the law, a legal act or a generally accepted practice. 14.2.

For the purpose of these general terms and conditions force majeure is, apart from what is understood as such by law and case law, understood to include but not to be limited to, for instance, storm damage and other natural disasters, impediments by third parties, obstructions in transport in general, full or partial industrial action, riots, war or threat of war both here in the country and in the country of origin of the materials, lock-outs, loss of or damage to goods during transport to Roffelsen or the other party, failing or late delivery of goods by suppliers of Roffelsen, export and import bans, sanctions, boycotts, embargoes, full or partial mobilisation, restricting measures of any official authority, fire, disruptions and accidents in the business or in the means of transport of Roffelsen or in the means of transport of third parties and the imposition of other official measures.

14.3. Roffelsen is also entitled to rely on force majeure if the circumstance that prevents (further) compliance occurs after Roffelsen should already have complied with its obligations.

14.4. During the period that the force majeure continues the parties can suspend the obligations pursuant to the agreement. If the said period has continued for more than two months then each party is entitled to rescind the agreement, without being held to pay compensation to the other party.

14.5. To the extent that at the time of the occurrence of the force majeure Roffelsen has already complied or shall comply partly with its obligations pursuant to the agreement, and independent value can be attributed to the part complied with respectively to be complied with, Roffelsen shall be entitled to invoice the part already complied with respectively yet to be complied with separately. The other party is held to pay the said invoice as if it were a separate

agreement. Roffelsen is moreover entitled to change the content of the agreement in such manner that implementation of it becomes possible.

#### **Article 15. CONFIDENTIALITY**

Both parties are held to observe confidentiality with regard to any and all confidential information that they obtained from each other or from another source in the context of their agreement. Information is deemed to be confidential if this was communicated by the other party or if this derives from the nature of the information.

#### **Article 16. PERSONAL DATA**

16.1. To the extent that personal data are processed within the framework of the implementation of an agreement, this shall take place in conformity with the applicable (inter-)national legislation in the area of the protection of personal data.

16.2 Technical and organisational measures shall be taken to protect the personal data against loss or against any other form of unlawful processing, taking the state of the art and the nature of the processing into account.

#### **Article 17. PARTIAL INVALIDITY**

If one or more provisions of this agreement with the other party are not or not entirely legally valid then the other provisions remain in full force and effect. In lieu of the invalid provisions an appropriate scheme applies that best approaches the intention of the parties and the commercial result pursued by them in a legally effective manner.

#### **Article 18. INTELLECTUAL PROPERTY RIGHTS**

18.1. Roffelsen reserves all its rights in the area of intellectual property in connection with goods delivered by the same. Roffelsen is and remains the exclusive beneficiary of the copyrights, the model rights or any other intellectual property rights with regard to goods delivered by the same, unless stipulated otherwise in writing.

18.2. Without written consent of Roffelsen the other party is not allowed to copy or to change the goods, either in whole or in part.

#### **Article 19. APPLICABLE LAW, COMPETENT COURT**

19.1. Dutch law is exclusively applicable to these general terms and conditions and to any and all proposals and agreements of Roffelsen. The applicability of the Vienna Sales Convention is expressly excluded.

19.2 Any and all disputes that may arise between the parties shall exclusively be brought to the cognisance of the competent court of the place of establishment of Roffelsen, the latter without prejudice to the authority of Roffelsen to bring the dispute to the cognisance of the court competent in the place of establishment of the other party. Disputes between Roffelsen and other parties established outside the EU shall be settled definitively through arbitration before the International Chamber of Commerce (ICC) in accordance with the Arbitration Regulations of the ICC by one arbitrator appointed in accordance with the said Regulations. The language used is Dutch or English. The arbitration shall take place in Eindhoven (the Netherlands).

#### **Article 20. INTERPRETATION AND SOURCE OF THE TERMS AND CONDITIONS**

20.1. These terms and conditions were filed at the office of the (Dutch) Chamber of Commerce.

20.2. The Dutch text shall always be decisive when interpreting the content and the scope of these general terms and conditions.

20.3. The lastly filed version and/or the version as applicable at the time of conclusion of the agreement shall always apply.

In derogation from article 11 the following applies to German customers:

#### **Artikel 21. EIGENTUMSVORBEHALT**

Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns. Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers - Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtwert aller mitverarbeiteten Vorbehaltswaren entspricht. Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab. Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen. Scheck/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung. Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.